Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1462

WHAT IT IS, INC. and
PEACHES PARLOR,

Petitioners,

vs.

MAYNARD JACKSON, MAYOR OF ATLANTA
and THE CITY OF ATLANTA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE GEORGIA COURT OF APPEALS

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Respondents respectfully pray that a writ of certiorari does not issue to review the opinion and judgment of the Georgia Court of Appeals entered in the above styled action on June 15, 1978.

REASONS FOR DENYING THE WRIT

I.

NO RIGHT GUARANTEED BY THE CONSTITUTION OF THE UNITED STATES HAS BEEN DENIED BY THE GEORGIA COURT OF APPEALS WHEN IT DETERMINED THAT THE WRIT OF CERTIORARI WAS NOT AVAILABLE TO REVIEW THE DECISION OF THE MAYOR OF THE CITY OF ATLANTA TO REVOKE THE PETITIONERS' LICENSE TO SELL ALCOHOLIC BEVERAGES.

The petitioner in the case, sub judice, has framed the primary issue in this case as whether or not the failure to provide appellate review for the revocation of a liquor license is a violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. Nevertheless, the Court of Appeals in its decision which is the subject of this petition for writ of certiorari did not hold that all means of appellate review were foreclosed to the petitioner in this case to review the decision of the Mayor of the City of Atlanta in revoking the alcoholic beverage license which is the subject of this case.

All that the Court of Appeals of the State of Georgia held was that the writ of certiorari as contained in Ga. Code §19-101, et seq. was not the means of which the Mayor's decision in this case could be reviewed. The Georgia statute which provides for the writ of certiorari asserts:

> "The writ of certiorari shall lie for the correction of errors committed by justices of the peace, corporation courts or councils or any inferior judicatory, or any person exercising judicial powers, including the ordinary, except in cases touching the probate of wills, granting letters testamentary and of administrations; also for the Supreme Court to the Court of Appeals as provided by §2-3708 (Constitution of 1945)." (Emphasis supplied). Ga. Code §19-101.

In intepreting the above quoted section of the Georgia Code the Court of Appeals relied on Georgia law to determine whether or not the decision of the Mayor of the City of Atlanta in this case was an administrative decision or a judicial decision. If such a decision was a judicial decision then it is reviewed by way of the writ of certiorari as provided in Ga. Code §19-101, et seq. See,

Southeastern Greyhound Lines v. Georgia Service Commission, 185 Ga. 75, 89-90 (1935) cited with approval in Cantrell v. Board of Trustees, etc., 135 Ga. App. 445 (1975). Conversely, if such decision of the Mayor of the City of Atlanta was an executive or administrative decision, then the decision of the Mayor could not be reviewed by the writ of certiorari statute, supra. In determining that the decision of the Mayor in this case was not a judicial decision the Court determined that the writ of certiorari was not the means for review. Nevertheless, THIS DOES NOT FORECLOSE THE PETITIONER IN THIS CASE FROM SEEKING REVIEW OF THE DECISION OF THE MAYOR BY WAY OF A PETITION IN EQUITY OR THE GEORGIA DECLARATORY JUDGMENT ACT. See Ga. Code §81A-165, et seq. and Ga. Code §110-1101, et seq.

Indeed, in Blackmon v. Alexander, 233 Ga. 832 (1975), the Georgia Supreme Court determined that,

> "Denial and cancellation of liquor licenses are actions of a public official subject to court review. In the absence of some remedial review prescribed by law, equity is available to review alleged abuses of discretion by the administrative licensing authority. (Emphasis supplied). Blackmon, supra, 835.

Thus, the question here is not whether all means for reviewing the Mayor's decision in this case has been foreclosed to the petitioner but rather the proper means by which such decision may be reviewed. Accordingly, the petitioner's reliance upon criminal cases in this civil case for the proposition that where all means of review of a judicial decision are foreclosed that he has been denied equal protection and due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution is in error.

CONCLUSION

Therefore, the petitioner has improperly framed the issues in this petition for writ of certiorari to the Georgia Court of Appeals, since the decision in this case may be reviewed by a petition in equity and pursuant to the Georgia Declaratory Judgment statute, supra. The petition for certiorari to the Court of Appeals of the State of Georgia should therefore be denied.

Respectfully submitted,

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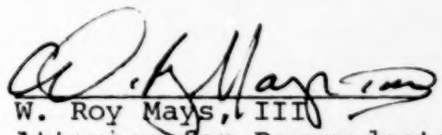
CERTIFICATE OF SERVICE

I, W. Roy Mays, III, hereby certify that I have served a copy of the foregoing Brief on Glenn Zell, Suite 620, 66 Luckie Street, N.W., Atlanta, Georgia 30303.

This 6th day of June, 1979.



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